

UNITED STATES OF AMERICA
UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

ROBERT C. MITCHELL, III,

Petitioner,

Case No. 4:05-cv-58

v.

Honorable Wendell A. Miles

KURT JONES,

Respondent.

ORDER DENYING MOTION TO STRIKE

This is a habeas corpus action brought by a state prisoner pursuant to 28 U.S.C. § 2254. On February 2, 2006, Respondent filed various materials in accordance with Rule 5, RULES GOVERNING § 2254 CASES. Included in those materials were purportedly complete trial transcripts from the eight days of Petitioner's jury trial (docket ##28-37). On August 5, 2008, Respondent filed supplemental Rule 5 materials (docket ##58-62) containing pages discovered to have been missing from the previously filed transcripts of days two, three and four of Petitioner's trial. This matter is before the Court on Petitioner's motion to strike those pages (docket #64).

Petitioner's motion is frivolous. In accordance with Rule 5, Respondent is required to file all relevant state-court transcripts. Where, as here, pages inadvertently have been excluded from the transcripts filed in this Court, supplementation by the Respondent is not only proper but mandatory. Accordingly,

IT IS ORDERED that Petitioner's motion to strike (docket #64) is **DENIED**.

Dated: September 2, 2008

/s/ Hugh W. Brenneman, Jr.
HUGH W. BRENNEMAN, JR.
United States Magistrate Judge